IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 62 of 2000()

CRA.276/1996 of ADDL.SESSIONS COURT, THALASSERY
CC.78/1994 of JUDICIAL MAGISTRATE OF IST CLASS TALIPARAMBA
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

JOSEPH CHUNAYANMAKKAL,
S/O.CHANDY, POTTAMPLAVE,
KADIYANMALA.

BY ADV. SMT.P.M.INDU
SRI.GEORGE SEBASTIAN

RESPONDENTS: RESPONDENTS/ COMPLAINANT& STATE
----

1. V.J.JOSE, S/O. JOSEPH,
VAZHAKUZHIYIL HOUSE,
CHEMPENTHOTTY, CHEMPENTHOTTY P.O.

2. STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SREEPRAKASH K.NAIR
PUBLIC PROSECUTOR SRI.SANTHOSHKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.62/2000

ORDER ON CRL.MP. 259/2000 IN OP. NO.62/2000

DISMISSED

08.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.R.P.No.62 of 2000

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 8th day of August, 2007

O R D E R

The revision petitioner is the accused, who stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced as modified by the appellate court to undergo simple imprisonment for three months and to pay a fine of Rs.5000/-, and with the direction that if the fine amount is realised, the same to be paid to the complainant as compensation under Section 357(1) Cr.P.C.

2. The prosecution case is that the accused borrowed a sum of Rs.60,000/- from the complainant and executed Ext.P1 cheque in discharge of the above liability, which when presented, got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount repaid. The evidence adduced in the matter consisted of the testimony of PW.1 and PW.2 and Exts.P1 to P5.

3. The defence version is that the complainant is a money lender and only Rs.5,000/- was borrowed and towards which a blank

cheque was given and the same has been converted into the impugned cheque incorporating a sum of Rs.60,000/-.

4. It is the case of the complainant that Ext.P1 was written and signed by the accused. The appellate court has noted that the handwriting in the vakalath of the complainant and that is seen on Ext.P1 has got very close similarity. But the appellate court has discarded the contention of the accused, as no independent evidence was adduced as to establish that only Rs.5000/- was borrowed.

In the circumstances, I find that reconsideration of the entire matter is called for. The findings of the courts below are set aside. The trial court is directed to dispose of the matter afresh after permitting the parties to adduce any further evidence, if they so desire and uninfluenced by any observations contained herein. The matter will stand posted before the court below on 10/09/2007.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.R.P.No.62 of 2000

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O R D E R

9th August, 2007